IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1928

CRL.A.No. 96 of 1998(A)

ST.1148/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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APPELLANT/COMPLAINANT:

ANTO DAVIS, THE PROPRIETOR,AYUR KENDRA,
SHORNUR ROAD, THRISSUR, THRISSUR DISTRICT.

BY ADV. SRI.M.K.DILEEP KUMAR

RESPONDENT/ACCUSED:

1.JOY THALIYATH,THE PROPRIETOR,
THALIYATH ENTERPRISES, THALIYATH HOUSE,
KANIMANGALAM, THRISSUR DISTRICT.

2.THE STATE OF KERALA, REP. BY THE DIRECTOR GENERAL
OF PROSECUTION, HIGH COURT, ERNAKULAM

BY PUBLIC PROSECUTOR K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON 29/11/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.96 OF 1998 (A)

Dated this the 29th day of November, 2006

JUDGMENT

This appeal is filed by the complainant against the acquittal of the accused under Section 256(1) of the Code of Criminal Procedure. Even though on several occasions case was posted and complainant was present, accused was not present and steps were pending for production of the accused. Before the production of the accused accused was acquitted. Trial court should not have acquitted the accused under Section 256 (1) of Cr.P.C. merely because complainant was absent on one day of posting. Since accused did not appear, his presence was not absolutely necessary on that day. Considering the facts and circumstances of the case, I am of the opinion that one more opportunity should be given to the appellant and hence the impugned order is set aside and I remand the matter to the Trial court for continuing the proceedings. Appellant should be present before the Trial court

on 9.1.2007. Fresh summons should be issued to the accused. Hence appeal is allowed by way of remand.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.96 OF 1998 (A)

JUDGMENT

29th November, 2006